* IN THE HIGH COURT OF DELHI AT NEW DELHI

\+ Bail Application No.3261/2005

% Date of Decision : 3rd July, 2007

PARVEEN MITTAL .....Petitioner
! Through : Mr. R.N. Mittal Sr.Adv. &
Mr. Rahul Sharma, Adv.

versus

$
STATE .....Respondent
^ Through : Anil Soni, APP

* CORAM:
HON'BLE MR. JUSTICE B.N. CHATURVEDI

1. Whether the Reporters of local papers may be allowed to see the judgment?

2. To be referred to the Reporter or not? Yes

3. Whether the judgment should be reported in the Digest? Yes

: **B.N.CHATURVEDI, J.**

1. The petitioner is facing trial alongwith his 10 co-accused in a case FIR No.253/2001, under Sections 302/307/34 IPC and Section 27 Arms Act, PS Parliament Street, relating to murder of

Smt.Phoolan Devi, a Member of Parliament (Lok Sabha) which took place on 25th July, 2001 around 1.30 p.m.

2. The petitioner, an Advocate by profession, allegedly supplied a revolver and cartridges to the prime accused Sher Singh Rana which were used in commission of murder of Smt. Phoolan Devi. This apart, the petitioner is also alleged to have had rendered advice to help his co-accused Sher Singh Rana to create a false alibi. The petitioner was arrested on 2nd August, 2001 being a party to the criminal conspiracy hatched to commit the murder Smt. Phoolan Devi.

3. Learned senior counsel for the petitioner argued that in terms of prosecution case, the petitioner had supplied a revolver and cartridges to his co-accused Sher Singh Rana in the presence of one Pankaj Kalra—PW-62. Learned senior counsel

contended that in his entire statement before the Trial Court, Pankaj Kalra—PW did not support the prosecution case in regard to alleged supply of the revolver and cartridges to co-accused Sher Singh Rana by the petitioner. It was argued that co-accused Sher Singh Rana initially did not name the petitioner in his earlier two disclosure statements recorded by the police and it was only in his third disclosure statement that he is alleged to have had told that a revolver and cartridges were supplied to him by the petitioner. According to the learned senior counsel, except Pankaj Kalra—PW, there is no other evidence to support the prosecution case in regard to alleged supply of revolver and cartridges to co-accused Sher Singh Rana by the petitioner. It was argued that the petitioner continues in custody ever since the date of his arrest, i.e., 2nd August, 2001 and as out of 172 prosecution witnesses, only 86 PWs

have been examined so far, it is unlikely that the trial would be concluded in near future. Learned senior counsel argued that since the only witness Pankaj Kalra—PW, who could have deposed against the petitioner, has already been examined, there is no possibility of petitioner tampering with evidence in case of his release on bail during the pendency of the trial.

4. The learned Additional Public Prosecutor, on the other hand, in opposition to the bail plea, submitted that though Pankaj Kalra—PW did not depose before the Court in conformity with his statement under Section 161 CrPC and omitted to state that the petitioner had supplied a revolver and cartridges to his co-accused Sher Singh Rana in his presence, it could not be lost sight of that in terms of his own admission, Pankaj Kalra—PW happens to be a close friend of main accused Sher Singh Rana and

thus it was not quite unexpected that he resiled from his statement under Section 161 CrPC in regard to the said fact. On the count of delay in concluding trial, it was pointed out that since one of the co-accused Shravan had been absconding and could be arrested on 4th July, 2004 and later another co-accused Sher Singh Rana managed to escape from jail custody on 17th February, 2004 and could be re-arrested on 24th April, 2006 only, the progress of the trial suffered a considerable setback.

5. A Status Report, regarding progress of trial, was called from the Trial Court which indicates that out of 172 witnesses, statements of 86 prosecution witnesses had been recorded by 15th May, 2007. It is gathered that on a previous occasion while dismissing the bail applications of co-accused, a direction was issued to expedite the trial. It appears that inspite of such direction, the trial has not yet reached half way

mark in terms of number of witnesses still left to be examined.

6. No doubt Pankaj Kalra—PW, solitary witness to alleged supply of revolver and cartridges by the petitioner to his co-accused Sher Singh Rana, made a departure from his statement under Section 161 CrPC while deposing before the Trial Court, evidentiary value of his statement is yet to be evaluated in conjunction with other evidence, if any, brought forth by the prosecution. The petitioner being alleged co-conspirator the prosecution evidence to be produced has to be looked at in its entirety to find the extent of petitioner's complicity, if any, in the commission of the crime. The release of the petitioner on bail in the midst of trial when more than half the number of prosecution witnesses are yet to be examined, may put the trial in jeopardy as the petitioner may tend to try to tamper with the evidence yet to be produced.

The bail plea of the petitioner thus cannot be granted.

7. The petition is, in the circumstances, dismissed. It is, however, impressed upon the Trial Court to expedite conclusion of the trial on priority basis.

(B.N.CHATURVEDI)
July 3, 2007 JUDGE